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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,762	03/15/2004	Tetsuro Uchida	MM4712	3443
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David A. Einhorn, Esq. Baker & Hostetler LLP 45 Rockefeller Plaza New York, NY 10111				
EXAMINER				
NGUYEN, BINH AN DUC				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/801,762

Applicant(s)

UCHIDA ET AL.

Examiner

Binh-An D. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) 4-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

The Request for Continued Examination filed May 12, 2009 has been approved, therefore, the Amendment filed April 16, 2009 is hereby considered. According to the Amendment, claim 1 has been amended.

Currently, claims 1 and 3-8 are pending in the application, wherein claims 4-8 have been previously withdrawn due to non-elected invention. Claims 1 and 3 are hereby examined on the merit. Acknowledgment has been made.

Claim Objections

Claim 1 is objected to because of the following informalities:

In claim 1, the recited phrase "each have its own game apparatus" (line 3) should be changed to "each has its own game apparatus". Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the recited limitations of "controls a display state of the other character such that the display state gradually changes from a normal display state, a fading display state, to a non-display state when a communication state with the other game apparatus deteriorates" Renders the claims vague and indefinite. It is unclear whether the character goes from a normal state to a fading state and then a non-display state or

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a character starts in either one of a normal or fade state and the goes to a non-display state, or that a character is in a normal and fade state at the same time and then goes to a non-display state. For the purpose of examination, this limitation is treated as the display state gradually changes from a normal display state to a fading display state then to a non-display state when a communication state with the other game apparatus deteriorates.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (6,356,288) in view of Shimizu (6,561,907).

Referring to claim 1, Freeman et al. teaches a communication game system for executing a communication interactive game between two or more independent game systems each has its own game apparatus (5:59-66), the system comprising: a game apparatus that is adapted to establish communication with at least one other game apparatus (Fig. 1); the game apparatus including a display unit (Fig.1); an operation unit; and a processing unit that is adapted to execute processes for displaying on the display unit a self-controlled character that is controlled by an operation of the operation unit (Fig. 2); wherein said processing unit receives information pertaining to another

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character that is controlled by an operation of the other game apparatus, displays the other character on the display unit based on the received information (Figs. 3, 4), and controls a display state of the other character when a communication state with the other game apparatus deteriorates (3:5-45). Freeman et al. further teaches applying cinematographic effects available, *e.g.*, *zoom-in*, *zoom-out*, *dummy*, *context switching*, *interlude*, *etc.*, (2:38-42) to the game as the game network latency increases (or communication deteriorates)(1:47-2:3; 3:4-60). Note that, according to Freeman et al.'s, in the case of applying context switching, *e.g.*, *the combatants (characters) being warped to another world where they do not face each other* (3:41-45), or in the case of *introducing one or more dummy objects into the scene blocking the view or diverting the viewers* (2:4-19) such cinematographic techniques result in changing characters from a normal display state (*e.g.*, normal interactive game display) to a non-display state. Further note that, cinematography is not limited to only motion pictures; and this does not preclude the displaying blank page or still picture.

Freeman et al. does not explicitly teach the limitation of controls a display state of the other character such that the display state gradually changes from a normal display state to a fading display state then to a non-display state. Shimizu et al., however, teaches image synthesis for video game which uses fading effect to fade out and fade in images (2:1-13)(Figs.10-14). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the fading effects of Shimizu et al. with the utilization of cinematographic effects such as context switching as the communication deteriorates, as taught by Freeman et al., to come up with a game

transition method that minimizes game distractions thus provides game players a more enjoyable experience.

Referring to claim 3, Freeman et al. teaches one game apparatus of the communication game system corresponds to a main apparatus (e.g., server 108) and a remaining one or more game apparatuses of the communication game system correspond to terminal apparatuses (e.g., agent machines, Fig.1); the main apparatus being adapted to make an inquiry to the one or more terminal apparatuses about character information pertaining to a character that is controlled by the inquired terminal apparatus, set the character information as set information of the character controlled by the inquired terminal apparatus if the character information is received from the inquired terminal apparatus (5:1-6:16), set communication error information as the set information of the character controlled by the inquired terminal apparatus if the character information is not received from the inquired terminal apparatus, and send the set information of the one or more terminal apparatuses to the one or more terminal apparatuses (1:47-2:42; 4:24-67); and the terminal apparatus being adapted to send character information pertaining to a self-controlled character of said terminal apparatus to the main apparatus, receive the set information sent from the main apparatus, and, based on the received set information, change a display state of a character for which the communication error information is set as the set information (1:47-2:42; 2:58-3:45).

The declaration under 37 CFR 1.132 filed April 16, 2009 is sufficient to overcome the rejection of claims 1 and 3 based upon Applicant's declaration traversing Freeman et al.'s teaching of fading display state, however, this limitation has been rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman et al. (6,356,288) in view of Shimizu (6,561,907) as being addressed above.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Response to Arguments

Applicant's arguments with respect to claims 1 and 3 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh-An D. Nguyen whose telephone number is 571-272-4440. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry. Suhol/
Supervisory Patent Examiner, Art
Unit 3714

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